

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF SECURITIES  
HELENA, MONTANA

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IN THE MATTER OF:	)	
	)	
CASCADE EXPLORATION, INC.	)	
CASCADE WATER HOLDINGS, INC.	)	
182 Alec Roy Road	)	
Roundup, MT, 59072	)	
Nevada Corporations;	)	
	)	CASE NO. I 11-08-05-150
GORDON WALTERS, individually, and	)	
in his capacity as President and Treasurer	)	
of Cascade Exploration, Inc. and President,	)	FINDINGS OF FACT, CONCLUSIONS
Treasurer and Director of Cascade Water	)	OF LAW, FINAL AGENCY
Holdings, Inc; ANN WALTERS,	)	DECISION AND ORDER AND NOTICE
individually, and in her capacity as	)	OF OPPORTUNITY FOR JUDICIAL
Secretary of Cascade Exploration, Inc. and	)	REVIEW
Cascade Water Holdings, Inc; CALVIN	)	
STATELEN, individually, and in his	)	
capacity as a promoter for Cascade	)	
Exploration, Inc. and Cascade Water	)	
Holdings, Inc; and DANNY KEGEL,	)	
individually, and in his capacity as a	)	
promoter for Cascade Exploration, Inc.	)	
and Cascade Water Holdings, Inc.,	)	
	)	
Respondents.	)	

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The Securities Department of the Office of the Montana State Auditor ("Department") on October 12, 2007, submitted a Motion for Summary Judgment and Supporting Brief in the above-entitled case. On October 18, October 23 and December 19, 2007, the Department supplemented its motion with additional evidence supporting its motion.

Respondents Gordon and Ann Walters, individually and on behalf of Cascade Water Holdings, Inc. and Cascade Exploration, Inc. responded on October 29, 2007, and December 26, 2007. The Department submitted its reply brief on January 22, 2008.

On June 25, 2008, Hearing Examiner Mike Rieley granted the Department's Motion for Summary Judgment and entered judgment against Respondents Gordon and Ann Walters, individually and on behalf of Cascade Water Holdings, Inc. and Cascade Exploration, Inc., and served all parties with an Order to that effect. On July 24, 2008, the Commissioner of Securities issued a Notice of Opportunity to File Exceptions and Scheduling Order. Pursuant to a Motion for Extension of Time filed on August 18, 2008, by the Respondents, the Commissioner issued an Order Granting Motion for Extension and Revised Scheduling Order which set September 19, 2008, as the last day for submittal of briefs regarding exceptions to the Order on Summary Judgment. Neither party submitted exceptions to that decision. After due consideration of the Order on Summary Judgment submitted by the Hearing Examiner, the Commissioner hereby issues the following:

#### **FINDINGS OF FACT**

The Department served its first set of discovery requests on Respondents Gordon Walters and Ann Walters and the two Cascade corporations on or about May 31, 2007, which included four admission requests. (Exhibit A to Department's Summary Judgment Motion.)

On or about June 4, 2007, Respondents sent a letter to the Department indicating the letter was a response to what Respondents identify as a "service contract titled, [sic] discovery request." (Exhibit B to Department's Summary Judgment Motion.) In their letter dated June 4, 2007, Respondents indicate the Department has "ten days from this date to show proof of a valid contract with the" Respondents. (Exhibit B, *supra*.) In a letter dated August 1, 2007, the Department informed Respondents of their responsibility to answer the Department's requests for admission and the potential consequence of not responding. (Exhibit C to Department's Summary Judgment Motion.) In its August 1, 2007, letter the Department also allowed

Respondents an additional two weeks to answer the requests for admission despite the fact that more than 30 days had lapsed since the Department served the discovery.

None of these Respondents answered the discovery. Rather, Respondents wrote a letter to the Department dated August 6, 2007, indicating they were not going to respond to the discovery until and unless the Department could demonstrate that "man made laws are greater than 'God's Law'" within ten days. (Exhibit D to Department's Summary Judgment Motion.) Furthermore, Respondents indicated the required "proof" that man made laws superseded God's law must be "signed by 'God.'"

At no time have the Respondents requested either an extension of time to respond to the Department's discovery requests for admission or to withdraw such admissions. Respondents should have responded to the Department's discovery requests, including the requests for admission not later than early July, allowing for the mail. The Department took the extra step of writing a letter to these Respondents urging responses to the discovery well after the date such responses were due. This step was taken in the interest of justice because the Respondents are acting pro se. Nonetheless, these Respondents have chosen to not only refuse to respond to the Department's discovery, but to also seek preposterous affirmations from the Department signed by "God."

As a result, the following four Requests for Admission propounded to the Respondents are therefore deemed admitted:

REQUEST FOR ADMISSION NO. 1: Please admit that you created false documents to appear as if they were protected by the United States Small Business Administration.

RESPONSE: [No response received.]

REQUEST FOR ADMISSION NO. 2: Please admit that you are not registered securities salespersons in the State of Montana.

RESPONSE: [No response received.]

REQUEST FOR ADMISSION NO. 3: Please admit that Cascade is not registered to conduct securities business in the State of Montana.

RESPONSE: [No response received.]

REQUEST FOR ADMISSION NO. 4: Please admit that investments in Cascade are not properly registered securities in the State of Montana.

RESPONSE: [No response received.]

These admitted facts, coupled with the witness affidavits substantiating the undisputed facts supports the summary judgment request of the Department. At no time did the Respondents request relief from the consequences of the requests for admissions being admitted as facts.

Calvin Statelen (Statelen), a Respondent in this case, entered into a consent agreement with the Department and was subsequently dismissed from the case with prejudice. Due to his status in the case and relationship with the other Respondents, Statelen is in a position to have knowledge relevant to the Department's summary judgment motion. Attached to the Department's Summary Judgment Motion as Exhibit E is Statelen's affidavit asserting certain facts. In addition, individuals identified by the Department as victims in this matter also have provided affidavits swearing to certain relevant facts. (Motion Exhibits F through Q, inclusive.) Respondents have failed to deny certain facts pursuant to the Department's admission requests.

The first admission request submitted to Respondents by the Department asked Respondents to "admit that [Respondents] created false documents to appear as if they were protected by the United States Small Business Administration." In his affidavit, Statelen swears he invested \$25,000.00 "in Cascade Exploration, Inc. and Cascade Water Holdings, Inc., with Ann and Gordon Walters that was evidenced by a 'surety bond' allegedly protected by the United States Small Business Administration." Respondents failed to deny "that [Respondents] are not registered securities salespersons in the State of Montana." The Department's review of its

records shows that none of these Respondents was ever registered as securities salespersons in Montana.

Statelen also swears in his affidavit that "Gordon and Ann Walters solicited me to invest at least \$164,450 in Cascade Exploration, Inc. and Cascade Water Holdings, Inc." Statelen further swears that "Gordon and Ann Walters provided [him] stock certificates representing . . . \$56,000 of [his] aggregate investment in the two corporations." Additionally, Statelen swears in his affidavit that "[n]either Ann nor Gordon Walters ever told me they were not registered to sell securities in Montana." Finally, Statelen swears in his affidavit that he solicited investments from fourteen other individuals "on behalf of Gordon and Ann Walters." The individuals Statelen solicited "[c]ollectively . . . invested \$163,648.00 [of their money] in Cascade Exploration or Cascade Water Holdings."

Investor, Steve Burstock (Burstock) swears in his affidavit (Exhibit F) that he was "solicited to invest money in Cascade Water Holdings on behalf of Gordon and Ann Walters." Burstock swears he invested "\$500.00 and was provided with a stock certificate evidencing" his investment. Burstock swears the Walters never told him they were not registered to sell securities in Montana and "that the securities of Cascade Water Holdings were not registered in Montana."

Investor Darrell Kovach (Kovach) swears in his affidavit (Exhibit G) that he "was solicited to invest . . . in Cascade Water Holdings" and that the solicitation was done "on behalf of Gordon and Ann Walters." Kovach swears he invested \$1,200.00 and "was provided with a stock certificate evidencing the investment." Kovach swears the Walters never told him they were not registered to sell securities in Montana and "that the securities of Cascade Water Holdings were not registered in Montana."

Investor John Hinman (Hinman) swears in his affidavit (Exhibit H) that he "was solicited to invest . . . in Cascade Water Holdings" and that the solicitation was done "on behalf of Gordon and Ann Walters." Hinman swears he invested \$3,000.00 and "was provided with a stock

certificate evidencing the investment." Hinman swears the Walters never told him they were not registered to sell securities in Montana and "that the securities of Cascade Water Holdings were not registered in Montana."

Investor Darla Niebur (Niebur) swears in her affidavit (Exhibit I) that she "was solicited to invest . . . in Cascade Water Holdings" and that the solicitation was done "on behalf of Gordon and Ann Walters." Niebur swears she invested \$150.00 and "was provided with a stock certificate evidencing the investment." Niebur swears the Walters never told her they were not registered to sell securities in Montana and "that the securities of Cascade Water Holdings were not registered in Montana."

Investor, Paul Hintzen (Hintzen) swears in his affidavit (Exhibit J) that he was "solicited to invest money in Cascade Water Holdings on behalf of Gordon and Ann Walters." Hintzen swears he invested "\$3,390.00 and was provided with a stock certificate evidencing" his investment. Hintzen swears the Walters never told him they were not registered to sell securities in Montana or "that the securities of Cascade Water Holdings were not registered in Montana."

Investor Joan Marx (Marx) swears in her affidavit (Exhibit K) that she was "solicited to invest money in Cascade Water Holdings on behalf of Gordon and Ann Walters." Marx swears she invested "\$2,000.00 and was provided with a stock certificate evidencing" her investment. Marx swears the Walters never told her they were not registered to sell securities in Montana or "that the securities of Cascade Water Holdings were not registered in Montana."

Investor Blain Raad (Raad) swears in his affidavit (Exhibit L) that he was "solicited to invest money in Cascade Water Holdings on behalf of Gordon and Ann Walters." Raad swears he invested "\$500.00 and was provided with a stock certificate evidencing" his investment. Raad swears the Walters never told him they were not registered to sell securities in Montana or "that the securities of Cascade Water Holdings were not registered in Montana."

Investor Kevin Sand (Sand) swears in his affidavit (Exhibit M) that he was "solicited to invest money in Cascade Exploration on behalf of Gordon and Ann Walters." Sand swears he

invested "\$15,000.00 and was provided with a stock certificate evidencing" his investment. Sand swears the Walters never told him they were not registered to sell securities in Montana or "that the securities of Cascade Exploration were not registered in Montana."

Investor Sterling Delbridge (Delbridge) swears in his affidavit (Exhibit N) that he was "solicited to invest money in Cascade Water Holdings on behalf of Gordon and Ann Walters." Delbridge swears he invested "\$11,500.00 and was provided with a stock certificate evidencing" his investment. Delbridge swears the Walters never told him they were not registered to sell securities in Montana or "that the securities of Cascade Water Holdings were not registered in Montana."

Investor Eric Haury (Haury) swears in his affidavit (Exhibit O) that he was "solicited to invest money in Cascade Exploration on behalf of Gordon and Ann Walters." Haury swears he invested "\$15,000.00 and was provided with a stock certificate evidencing" his investment. Haury swears the Walters never told him they were not registered to sell securities in Montana or "that the securities of Cascade Exploration were not registered in Montana."

The Department seeks summary judgment relevant to the elements of the cause of action for failure to properly register as required by the Montana Securities Act, for omission of material facts relevant to registration, and for omission of material facts relevant to whether certain surety bonds were not protected by the United States Small Business Administration. Thus, the Department must show there are no facts in dispute regarding each of these elements.

The Department relies on its discovery requests for admission and the subsequent letter sent to Respondents regarding those requests for admission, as well as the only response to those requests received. Additionally, the Department relies on the sworn affidavits provided by Calvin Statelen, Steve Burstock, Darrell Kovach, John Hinman, and Darla Niebur.

Each of the investors providing affidavits, including Statelen, indicate the activity to which they swear occurred between January 1, 2004, and January 1, 2007. Respondents failed to

deny "that Cascade [Exploration, Inc. and Water Holdings, Inc.] is not registered to conduct securities business in the State of Montana."

The Department's review of its records shows that neither company is registered to conduct securities business in Montana, nor were the companies' securities registered prior to sales of their shares or stocks. Statelen swears in his affidavit that "neither Ann nor Gordon Walters ever told me the investments were not registered in Montana."

Based upon the foregoing Findings of Fact, the Commissioner makes the following

### **CONCLUSIONS OF LAW**

#### **Summary Judgment**

1. Summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56(c), M. R. Civ. P.
2. Even if no allegation is raised by a party against whom summary judgment is sought, contending the existence of a genuine issue of material fact, the question becomes whether the moving party is entitled to judgment as a matter of law.
3. Rule 56(e) M. R. Civ. P. states that even in the event an adverse party fails to respond to a summary judgment motion, summary judgment shall be granted only "if appropriate." Therefore, each of the instances for which a party seeks summary judgment, must be affirmatively examined to determine entitlement to judgment as a matter of law.
4. The Department seeks summary judgment relevant to the elements of the cause of action for failure to properly register as required by the Montana Securities Act, for omission of material facts relevant to registration, and for omission of material facts relevant to whether certain surety bonds were not protected by the United States Small Business Administration. Thus, the Department must show there are



no facts in dispute regarding each of these elements. The Department relies on its discovery requests for admission and the subsequent letter sent to Respondents regarding those requests for admission, as well as the only response to those requests received. Additionally, the Department relies on the sworn affidavits provided by Calvin Statelen, Steve Burstock, Darrell Kovach, John Hinman, and Darla Niebur.

5. Respondents' failure to deny the Department's discovery requests for admission renders those facts deemed admitted and therefore undisputed.
6. Pursuant to Rule 36 M. R. Civ. P. "any matter admitted" in response to a discovery request for admission "is conclusively established." Rule 36(b), M. R. Civ. P.
7. Where a party fails to deny a matter set forth in a discovery request for admission within 30 days of the service of such request, the matter is admitted. Rule 36(a), M. R. Civ. P.
8. However, a party may seek an order for withdrawal of such an admission. Rule 36(b), M. R. Civ. P.

#### **Securities Violations**

9. Respondents violated § 30-10-201, MCA, by failing to register as securities salespersons before they offered or sold securities in Montana;
10. Respondents violated § 30-10-202, MCA, by failing to register the shares and/or stocks in Cascade Exploration, Inc., and Cascade Water Holdings, Inc., prior to offering or selling these securities;
11. Respondents violated § 30-10-301, MCA, when they solicited investors while omitting the material facts that they were not registered to sell securities in

Montana and the securities they were offering and selling were not registered in Montana, as required by law; and

12. Respondents violated § 30-10-301, MCA when they solicited investors while omitting the material fact that the "bonds" they offered and sold to Statelen were not protected by the United States Small Business Administration.

Based on the foregoing Findings of Fact and Conclusions of Law, the Commissioner enters the following:

**FINAL AGENCY DECISION AND ORDER**

1. The December 3, 2007, and December 26, 2007 Motions to Dismiss of the Respondents are denied.
2. The facts Respondents failed to deny in the Department's requests for admission 1 through 4, inclusive, are deemed admitted.
3. There are no genuine issues of material fact that require resolution by the trier of fact as to the matters presented in the Department's Motion for Summary Judgment.
4. The Motion for Summary Judgment of the Department is granted.
5. The requests by the Department that Respondents be held in violation of the Montana Securities Act, §§ 30-10-101, et seq., MCA, for the following violations are granted:
  - a. Gordon Walters violated § 30-10-201, MCA, by selling or offering securities without proper registration to conduct such business in Montana;
  - b. Gordon Walters violated § 30-10-301, MCA, by misrepresenting that certain documents he created were "surety bonds" that were protected by the United States Small Business Administration;

- c. Gordon Walters violated § 30-10-301, MCA, by omitting the material fact that he was not properly registered to conduct securities business in Montana when he sold or offered to sell certain securities to Calvin Statelen, Margaret Anderson, Thomas Bergren, Dennis Bahmiller, Alberta Booth, Diane Collins, Gina Colwell, Linda Conway, Sheila Forschee, Donald Gomke, Donald Leo, Dean Lotton, Myrla McCoy, Edward Nystrom, Marciel Thiel, Steve Burstock, Darrell Kovach, John Hinman, Darla Niebur, Paul Hintzen, Joan Marx, Blain Raad, Kevin Sand, Sterling Delbridge, and Eric Haury;
- d. Gordon Walters violated § 30-10-301, MCA, each time he solicited investors by omitting the material fact that the securities he was selling or offering for sale were not properly registered in Montana;
- e. Gordon Walters violated § 30-10-202, MCA, each time he solicited investors by offering or selling securities that were not properly registered in Montana;
- f. Ann Walters violated § 30-10-201, MCA, each time she solicited investors by selling or offering securities without proper registration to conduct such business in Montana;
- g. Ann Walters violated § 30-10-301, MCA, by misrepresenting to Statelen that certain documents she created were "surety bonds" that were protected by the United States Small Business Administration;
- h. Ann Walters violated § 30-10-301, MCA, by omitting the material fact that she was not properly registered to conduct securities business in Montana when she sold or offered to sell certain securities to Calvin Statelen, Margaret Anderson, Thomas Bergren, Dennis Bahmiller, Alberta Booth, Diane Collins, Gina Colwell, Linda Conway, Sheila Forschee, Donald Gomke, Donald Leo, Dean Lotton, Myrla McCoy, Edward Nystrom, Marciel Thiel, Steve Burstock, Darrell Kovach, John Hinman, Darla Niebur, Paul Hintzen, Joan Marx, Blain Raad, Kevin Sand, Sterling Delbridge, and Eric Haury;
- i. Ann Walters violated § 30-10-301, MCA, each time she solicited investors by omitting the material fact that the securities she was selling or offering for sale were not properly registered in Montana;
- j. Ann Walters violated § 30-10-202, MCA, each time she solicited investors by offering or selling securities that were not properly registered in Montana;
- k. Cascade Exploration, Inc. violated § 30-10-202, MCA, each time investors purchased shares in the company by failing to properly register as a security in Montana; and
- l. Cascade Water Holdings, Inc., violated § 30-10-202, MCA, each time investors purchased shares in the company by failing to properly register as a security in Montana.

6. A \$5,000.00 fine for each of the above-identified violations is imposed on the respective Respondents.
7. Respondents shall pay restitution to the victims herein identified.
8. The Respondents Gordon Walters and Ann Walters are each prohibited from registering as securities salespersons or investment advisor representatives.
9. Respondents Cascade Exploration, Inc., and Cascade Water Holdings, Inc., are each prohibited from registering as securities in Montana.

**NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW**

Respondents are hereby notified of their right to request judicial review of this Order by filing a petition for judicial review within 30 days of service of this Order with the district court in Lewis and Clark County, Montana, as provided in §§ 2-4-702 and 33-1-711, Mont. Code Ann.

DATED this 30<sup>th</sup> day of October, 2008.

JOHN MORRISON  
State Auditor and Commissioner of Securities

By   
JANICE S. VANRIPER, Deputy State Auditor

**CERTIFICATE OF SERVICE**

I hereby certify I served a copy of the foregoing Findings of Fact, Conclusions of Law, Final Agency Decision and Order and Notice of Opportunity for Judicial Review upon all parties of record on this 30<sup>th</sup> day of October, 2008, by mailing or hand-delivering a copy thereof to:

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State Auditor's Office